



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue, Suite 155
Seattle, WA 98101-3188

REGIONAL
ADMINISTRATOR'S
DIVISION

August 2, 2021

Fernando L. Fernández
U.S. Department of Veteran Affairs
Construction & Facilities Management Office
425 I Street, NW
Washington, DC 20001

Dear Mr. Fernández:

The U.S. Environmental Protection Agency (EPA) has reviewed the U.S. Department of Veteran Affairs (VA) Notice of Intent initiating the scoping process for VA's expansion activities in the Tahoma National Cemetery in Kent Washington (EPA Project Number 21-0045-VA). EPA comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR paragraphs 1500-1508) and Section 309 of the Clean Air Act.

The NOI described construction and expansion activities to create a loop road, maintenance structure, 1,600 square foot building, and internment areas located in wooded areas adjacent to wetlands. The expansion is a 43-acre area in the northwestern portion of the property and is the last remaining undeveloped portion of the 158-acre cemetery property.

EPA appreciates the opportunity to review the Tahoma National Cemetery Proposed Phase III Expansion Project NOI, and hope that our comments are helpful to prepare the Draft Environmental Assessment. EPA looks forward to continued coordination through the NEPA process for this important project. If you would like to discuss these comments, please contact David Magdangal of my staff at (206) 553-4044 or magdangal.david@epa.gov, or me at (206) 553-1774 or chu.rebecca@epa.gov.

Sincerely,

Rebecca Chu, Chief
Policy and Environmental Review Branch

U.S. Environmental Protection Agency Scoping Comments on Tahoma National Cemetery Proposed Phase III Expansion Kent, Washington

Range of Alternatives

Consistent with the purpose of the NEPA,¹ EPA encourages selection of alternatives that protect, restore, and enhance the environment. We support the lead agencies' efforts to identify and select alternatives that maximize environmental benefits and that avoid, minimize, and/or otherwise mitigate environmental impacts. We further note our support for actions that restore natural processes and recommend that you consider an alternative that evaluates and identifies an environmentally preferred alternative.

Environmental effects

Because the project could impact natural resources in the analysis area, EPA recommends the NEPA document thoroughly analyze the scope of potential alternatives and environmental impacts including mitigation measures to avoid, minimize and compensate for those impacts. EPA recommends the Draft EA analyze the following resource areas to best inform the public and decision makers of potential project impacts.

a) Water quality

Section 303(d) of the Clean Water Act requires the States and Tribes with EPA-approved water quality standards (WQS) identify water bodies that do not meet WQS. Where WQS are not met, States and Tribes are required to develop water quality restoration plans to meet established water quality criteria and associated beneficial uses. EPA recommends that the Draft EA for the project include the following information:

- Impacted waters of the U.S., the nature of the impacts, and specific pollutants likely to affect those waters;
- Water bodies potentially affected by the project that are listed on the State and most current EPA-approved 303(d) list;
- Existing restoration and enhancement efforts for those waters; how the proposed project would coordinate with those on-going efforts; and any mitigation measures implemented to avoid further degradation of impaired waters;
- How the project would meet the antidegradation provisions of the CWA found in 40 CFR §§ 131.12(a)(1)-(3). The State of Washington's antidegradation policy can be found at <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A> under Part III-Antidegradation; and
- Evaluate any interactions between sub-surface disturbance/construction and shallow groundwater, including potential effects to the shallow subsurface flows, springs and/or groundwater-dependent ecosystems (and supporting hydrology) in the project area.

Because the CWA also requires any construction project resulting in the disturbance of one or more acres to have authorization under a construction general permit², EPA recommends the following information for the Draft EA:

- Direct, indirect, and cumulative impacts from storm water discharges;

¹ 40 CFR 1500.1

² <https://www.epa.gov/npdes/stormwater-discharges-construction-activities>

- How the project would meet the requirements of the National Pollutant Discharge Elimination System permit program under the CWA, including development of Storm Water Pollution Prevention Plans, reporting, and monitoring;
- Best management practices, erosion and sediment control, and other mitigation measures to minimize impacts;
- Considerations for zero or low impact development techniques in project design due to their potential to reduce storm water volumes, and mimic natural conditions. For example, consider avoiding and minimizing creation of new impervious surface and excavation; and
- Application of green construction and management practices, consistent with the federal “green” requirements and opportunities that may apply to design, operation, and maintenance of project-related facilities and equipment.

b) Aquatic resources and impacts

Because there may be aquatic resources in the planning area, EPA recommends including the following information in the Draft EA for the project:

- Description of all waters of the U.S., including project alternatives that could affect wetlands. EPA recommends also identifying any navigable waters in the analysis area;
- Acreages and channel lengths, habitat types, values, and functions of these waters;
- Whether the project would result in discharge of dredged or fill materials into surface waters of the United States. If so, CWA §404 authorization from the U.S. Army Corps of Engineers would be required for the project, and EPA recommends that the Draft EA describe this permit application process and recommended measures to protect aquatic resources from impacts resulting from the proposed project;
- Mitigation plans, including compensatory mitigation required under the CWA, to reduce impacts to wetlands and waters of the U.S.; and
- Alternatives that include maintaining the existing riparian habitat and buffer within the ordinary high-water mark (OHWM) of Big Soos Creek. A riparian buffer area would serve as a natural filter for sediments and storm water runoff from discharging into the creek and improve water quality. Because a salmon hatchery is located on the creek near its mouth east of the City of Auburn, a riparian habitat would maintain groundwater and surface water interactions and the hyporheic zone, which supports invertebrate fauna, a food source for juvenile salmon and other resident fish species.

c) Air quality impacts

Because the proposed action may result in impacts on air quality, EPA recommends that the Draft EA for the project include:

- A detailed discussion of ambient air conditions (baseline or existing conditions), National Ambient Air Quality Standards (NAAQS) and criteria pollutant non-attainment areas in the analysis area and vicinity, if applicable;
- Estimated emissions of criteria pollutants for the analysis area and discussion of the timeframe for release of these emissions from construction through the lifespan of the proposed project. For estimation of emissions, it would be helpful to specify all emission sources and quantify related emissions;
- Specific information about pollutants from mobile sources, stationary sources, and ground disturbance;

- A Construction Emissions Mitigation Plan that identifies actions to reduce diesel particulate, carbon monoxide, hydrocarbons, and oxides of nitrogen or NOx;
- Potential effects from air pollutants, including air toxics, to:
 - workers, ground crews, nearby residents, businesses;
 - sensitive receptor locations, such as, schools, medical facilities, senior centers and residences, daycare centers, outdoor recreation areas (e.g., parks); and
- Mitigation measures to minimize the proposed project impacts to air quality.

d) Threatened and endangered species

The proposed project may impact endangered, threatened or candidate species listed under the Endangered Species Act, their habitats, as well as state sensitive species. EPA recommends that the Draft EA for the project identify the endangered, threatened, and candidate species under ESA, and other sensitive species within the project corridor and surrounding areas. In addition, EPA recommends the Draft EA provide information on critical habitat for the species; impacts the project could have on the species and their critical habitats; and how the proposed project will meet all requirements under ESA, including consultation with the U.S. Fish and Wildlife Service and National Oceanographic Atmospheric Administration - Fisheries. The document may need to include a biological assessment and a description of the outcome of consultation with the USFWS and/or NOAA Fisheries under Section 7 of the ESA.

e) Indirect and cumulative effects

Please note that according to the Federal NEPA Contacts Meeting held on March 25, 2021, the 2020 CEQ regulations do not prevent or prohibit the analysis of indirect and/or cumulative effects. As such, EPA encourages analyzing the project's indirect and cumulative effects to best capture impacts to human health and the environment.

Cumulative impact analyses describe the threat to resources as a whole, presented from the perspective of the resource instead of from the individual project. Cumulative impacts can result from individually minor, but collectively significant, actions taking place over a period of time. Discussions of cumulative impacts are usually more effective when included in the larger discussions of environmental impacts from the action (the environmental consequences chapter), as opposed to discussing cumulative impact analyses in a separate chapter.

EPA recommends the following be included in the cumulative impacts analysis:

- Identify how resources, ecosystems, and communities in the vicinity of the project have already been, or will be, affected by past, present, or future activities in the project area;
- Characterize these resources in terms of their response to change and capacity to withstand stresses;
- Use trends data to establish a baseline for the affected resources, to evaluate the significance of historical degradation, and to predict the environmental effects of the project components; and
- Focus on resources of concern or resources that are “at risk” and/or are significantly impacted by the proposed project before mitigation.

Climate Resilience and Greenhouse Gas Emissions Resilience

EPA recommends that the Draft EA incorporate measures that ensure the resiliency of proposed project activities to existing and foreseeable climate change trends. EPA believes the CEQ's December 2014 revised draft guidance for Federal agencies' consideration of GHG emissions and climate change

impacts in NEPA³ outlines a reasonable approach, and recommends agencies use the guidance when analyzing these issues. EPA also recommends the Draft EA include an estimate of the GHG emissions associated with the project (i.e. construction, operations, and maintenance), qualitatively describe relevant climate change impacts, and analyze reasonable alternatives and/or practicable mitigation measures to reduce project related GHG emissions. EPA recommends the following for inclusion in the Draft EA:

Affected Environment

- Include in the "Affected Environment" section of the Draft EA a summary discussion of existing and reasonably foreseeable environmental trends related to the changing climate relevant to the project. This information will assist with identification of potential project impacts that may be exacerbated by climate change and to inform consideration of measures to adapt to climate change impacts. (Among other things, this will assist in identifying resilience-related changes to the proposal.)

Environmental Consequences

- Estimate GHG emissions associated with the proposal and its alternatives. Example tools for estimating and quantifying GHG emissions can be found on CEQ's NEPA.gov website.⁴ For actions which are likely to have less than 25,000 metric tons of CO₂-e emissions/year, provide a qualitative estimate unless quantification is easily accomplished;
- Estimated GHG emissions can serve as a reasonable proxy for climate change impacts when comparing the proposal and alternatives. In disclosing the potential impacts of the proposal and reasonable alternatives, consideration should be given to whether and to what extent the impacts may be exacerbated by expected climate change in the action area, as discussed in the "affected environment" section;
- Recognizing that climate impacts are not attributable to any single action, but by a series of smaller decisions, EPA does not recommend comparing GHG emissions from a proposed action to global emissions. As noted by the CEQ revised draft guidance, "[t]his approach does not reveal anything beyond the nature of the climate change challenge itself: [t]he fact that diverse individual sources of emissions each make relatively small additions to global atmospheric GHG concentrations that collectively have huge impact." EPA also recommends that the VA does not compare GHG emissions to total U.S. emissions, as this approach does not provide meaningful information for a project level analysis. Consider providing a frame of reference, such as an applicable Federal, state, tribal or local goal for GHG emission reductions, and discuss whether the emissions levels are consistent with such goals; and
- Describe measures to reduce GHG emissions associated with the project, including reasonable alternatives or other practicable mitigation opportunities and disclose estimated GHG reductions associated with such measures. The Draft EA's alternatives analysis should, as appropriate, consider practicable changes to the proposal to make it more resilient to anticipated climate change. EPA further recommends that the Record of Decision commits to implementation of reasonable mitigation measures using adaptive management practices that would reduce or eliminate project related GHG emissions.

³ <https://www.govinfo.gov/content/pkg/FR-2014-12-24/pdf/2014-30035.pdf>

⁴ https://ceq.doe.gov/guidance/ceq_guidance_nepa-ghg.html

Public involvement in project planning and implementation

Because EPA anticipates that the proposed project would be of interest to a variety of stakeholders in the area, EPA strongly recommends the Draft EA describe efforts undertaken to ensure effective public participation in the scoping process and throughout the NEPA analysis process. For more information on effective public participation in the NEPA process, please consult the following resources:

- *The Citizen's Guide to the National Environmental Policy Act*⁵;
- *Community Guide to Environmental Justice and NEPA Methods*⁶;
- *Community Impact Assessment*⁷; and
- *Model Guidelines for Public Participation*⁸.

Environmental Justice

If the analysis area includes low income or minority populations, the Draft EA would need to address the potential for disproportionate adverse impacts to the populations. See Executive Orders 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*; 14008, *Tackling the Climate Crisis at Home and Abroad*; and 13985, *On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*.⁹ One tool available to locate minority and low income populations is the Environmental Justice Screening and Mapping Tool or EJSCREEN.¹⁰ You may also consult the Federal Interagency Working Group on Environmental Justice and NEPA Committee report, *Promising Practices for EJ Methodologies in NEPA Reviews* for additional information, particularly on determining whether the proposed project may result in disproportionately high and adverse impacts.¹¹ EPA recommends that other vulnerable and disadvantaged populations, such as, the elderly, the disabled, and children, be included in the analysis.¹² Other GIS tools and resources could complement the analysis to identify potentially affected communities with environmental justice concerns. The VA could request specific assistance from other federal and state agencies that might have information collected via ground truthing. An example of an emerging tool at the national and state level include:

- Limited English Proficiency Data and Language Map,¹³ and
- Washington State's Environmental Health Disparities Map.¹⁴

EPA recommends that the VA ensure that alternatives in the environmental analyses consider environmental justice concerns and allow communities with environmental justice concerns the opportunity to participate in the decision-making process.

⁵ https://ceq.doe.gov/get-involved/citizens_guide_to_nepa.html

⁶ <https://www.energy.gov/sites/prod/files/2019/05/f63/NEPA%20Community%20Guide%202019.pdf>

⁷ <https://www.fhwa.dot.gov/livability/cia/index.cfm>

⁸ <https://www.epa.gov/sites/production/files/2015-02/documents/recommendations-model-guide-pp-2013.pdf>

⁹ <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>; <https://www.govinfo.gov/content/pkg/FR-2021-02-01/pdf/2021-02177.pdf>; <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>

¹⁰ <https://www.epa.gov/ejscreen>

¹¹ https://www.epa.gov/sites/production/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

¹² See Executive Order 13045, Protection of Children from Health Risks and Safety Risks, at <https://www.epa.gov/laws-regulations/summary-executive-order-13045-protection-children-environmental-health-risks-and>

¹³ <https://www.lep.gov/maps>

¹⁴ <https://www.doh.wa.gov/DataandStatisticalReports/WashingtonTrackingNetworkWTN/InformationbyLocation/-WashingtonEnvironmentalHealthDisparitiesMap>

EPA recommends the "Environmental Justice (EJ) Interagency Working Group (IWG) Promising Practices for EJ Methodologies in NEPA Reviews" report, or the Promising Practices Report, as a tool that can provide ways to both consider environmental justice concerns during environmental analyses and ensure effective participation by communities with environmental justice concerns.¹⁵ The Promising Practices Report is a compilation of methodologies gleaned from current agency practices concerning the interface of environmental justice considerations through NEPA processes. For example, the Promising Practices Report suggests initiating meaningful engagement with communities early and often; providing potentially affected communities with an agency-designated point of contact; and convening project-specific community advisory committees, as appropriate.

When designing community engagement opportunities, the Promising Practices Report suggests selecting meeting locations, times and facilities that are local and convenient for potentially affected communities with environmental justice concerns and considering any potential cultural, institutional, geographic, economic, historical, linguistic, or other barriers to achieving meaningful engagement with the community.

Similar requirements for project proponents would ensure broad conformity to high standards of meaningful public and tribal involvement. The information acquired from meaningful involvement can help augment information not readily available through environmental justice screening tools (e.g., information about subsistence use integral to indigenous communities for ensuring food access/security).

Thoughtful consultation will readily inform the VA of the importance of certain areas and impacts to consider in a project proponent's NEPA analyses. For example, EPA encourages the VA to be aware of potential exposure pathways through surface water contact during fishing and consumption of fish.

Furthermore, EPA recognizes that every community is different, and every project is unique. For these reasons, the VA could benefit from hiring personnel with expertise in public outreach and engagement that could develop a plan or checklist that the VA could use to screen projects at the earlier stages of the process and evaluate the level of engagement needed to meaningfully inform the decision-making process.

Coordination with tribal governments

EPA recommends the Draft EA describe the process and outcome of government-to-government consultation between the VA and each of the tribal governments affected by the project, issues that were raised, if any, and how those issues were addressed. See Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.¹⁶

The project area is a usual and accustomed fishing area for the Muckleshoot Indian Tribe, and the Confederated Tribes and Bands of the Yakima Nation.¹⁷ The federal government recognizes tribes as sovereign nations with fishing rights at all "usual and accustomed [fishing] grounds and stations." The term "usual and accustomed" used in treaty language refers to those areas where tribes traditionally fished at before the federal government made treaties. These tribes have commercial fishing rights for salmon, shellfish, and non-salmon fish resources, as well as rights to harvest fish and shellfish for

¹⁵ <https://www.epa.gov/environmentaljustice/ej-iwg-promising-practices-ej-methodologies-nepa-reviews>

¹⁶ https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/Req-EO13175tribgovt.pdf

¹⁷ In the mid-1850s, the United States entered into treaties with a number of American Indian tribes in Washington. These treaties guaranteed the signatory tribes the right to "take fish at usual and accustomed grounds and stations...in common with all citizens of the territory" [U.S. v. Washington, 384 F. Supp. 312 at 332 (WDWA 1974)].

ceremonial and subsistence purposes. EPA therefore recommends evaluating impacts to Tribal Treaty resources by describing in the Draft EA all tribe's current ability, and likely ability under the action alternatives, to exercise their treaty-reserved fishing rights in their usual and accustomed grounds and stations.

National Historic Preservation Act

Section 106 of the National Historic Preservation Act requires consultation for tribal cultural resources. The NHPA includes historic properties that are in or meet the criteria for the National Register of Historic Places. Section 106 of the NHPA requires a federal agency, upon determining that activities under its control could affect historic properties, to consult with the appropriate State Historic Preservation Office/Tribal Historic Preservation Office. Under NEPA, the Draft EA must disclose any impacts to tribal, cultural, or other treaty resources. Section 106 of the NHPA requires that federal agencies consider the effects of their actions on cultural resources, following the regulation at 36 CFR 800.

In the Draft EA, discuss how the VA would avoid or minimize adverse effects on the physical integrity, accessibility, or use of cultural resources or archaeological sites, including traditional cultural properties (TCPs), throughout the project area. Discuss mitigation measures for archaeological sites and TCPs. EPA encourages the VA to append any Memoranda of Agreements to the Draft EA, after redacting specific information about these sites that is sensitive and protected under Section 304 of the NHPA. EPA also recommends providing a summary of all coordination with Tribes and with the State and Tribal Historic Preservation Offices, including identification of NRHP eligible sites and development of a Cultural Resource Management Plan.

Permits and authorizations

As construction of the project would likely require a variety of authorizations, EPA recommends that the Draft EA include a list of all permits/authorizations that the proposed project already has and will need including modification(s) to any existing permit or authorization, what activity and/or facility is regulated by the permit or authorization, entities that will issue each permit and authorization, when each will expire, and conditions to assure protection of human health and the environment. Such information, presented in a consolidated fashion, will assist agency decision-makers and the public in evaluating the proposed project's impacts and mitigation required to address those impacts.

Monitoring and adaptive management

The proposed project has the potential to affect resources for an extended period. As a result, EPA recommends that the project design include an environmental inspection and mitigation monitoring program to ensure compliance with all mitigation measures and assess their effectiveness. EPA recommends that the Draft EA describe the monitoring program and its use as an effective feedback mechanism to adjust during construction, operation, and maintenance. EPA recommends incorporating lessons learned from past practices in developing, building and managing similar projects, combined with the need to account for new challenges, such as climate change, to help inform the design and management of the currently proposed project.